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ABSTRACT

This report discusses the Education Flexibility Partnership Demonstration Program (Ed-Flex), which authorizes 12 states to grant waivers (temporary exceptions from certain federal requirements) to their local school districts. The report focuses on the scope and limitations of the current Ed-Flex waiver authority, as well as opportunities for expansion to more states under current eligibility requirements. It describes how states participating in Ed-Flex have found the program to be useful in achieving flexibility and in promoting educational reform efforts even though it does not address many key concerns about implementing federal requirements. Although Ed-Flex allows waivers from specific requirements within six major education programs, the largest of which is Title I of the Elementary and Secondary Education Act (ESEA), this waiver authority does not address district officials' major concerns, such as their need for accurate and timely information on federal requirements, and the lack of funds to meet their program and administrative costs. If the Ed-Flex program is to be significantly expanded, the current requirement that states must have an approved plan for education reform under Goals 2000 must be modified, and the states must make major changes in their ability to waive state-imposed, education-related requirements. (RJM)

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ED-FLEX PROGRAM

Increase in Flexibility Useful but Limited by Scope of Waiver Authority

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ED 429 367

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Ed-Flex Program: Increase in Flexibility Useful but Limited by Scope of Waiver Authority

Mr. Chairman and Members of the Subcommittee:

We are pleased to be here today to discuss the Education Flexibility Partnership Demonstration Program (Ed-Flex), which authorizes 12 states—Colorado, Illinois, Iowa, Kansas, Maryland, Massachusetts, Michigan, New Mexico, Ohio, Oregon, Texas, and Vermont—to grant waivers (temporary exceptions from certain federal requirements) to their local school districts.

Every federal education program has requirements with which states, local school districts, or both must comply in implementing the program. In earlier work on the range of federal requirements that affect school districts, we found that some programs—such as the Safe and Drug-Free Schools and Communities Program—impose relatively few requirements on state and local officials, while other programs are more restrictive. The Department of Education can waive certain federal requirements under specific programs; under Ed-Flex, the Department delegates some of its waiver authority to the Ed-Flex states. That is, in both Ed-Flex and non-Ed-Flex states, districts and schools may be granted an exemption from certain federal requirements for a given period of time. In Ed-Flex states, a district or school applies to the state for a waiver and the state decides whether or not to grant it. In non-Ed-Flex states, similar waivers are available, but the district must apply to the federal Department of Education for a decision.

Recently proposed legislation would increase the number of states allowed to participate in Ed-Flex and would expand somewhat the range of federal requirements that Ed-Flex states could waive. Some legislators have supported such proposals because they view Ed-Flex as highly successful in promoting educational reform efforts and would like to see it expanded. Others, however, have expressed concern that key federal objectives (such as targeting federal resources to students most in need) could be compromised.

My testimony today focuses on two main topics: (1) the scope and limitations of the current Ed-Flex waiver authority and (2) opportunities for expansion to more states under current eligibility requirements. In addition, I will discuss the challenges posed for the Ed-Flex program of balancing the two objectives of achieving federal program oversight and offering flexibility to state and local school districts. My statement is based

primarily on information from our recent report on the implementation of the Ed-Flex waiver process.[1]

In summary, states participating have generally found Ed-Flex to be a useful tool for achieving flexibility and promoting educational reform efforts even though—because of the limited scope of its waiver authority—it does not address many of their key concerns about implementing federal requirements.

- Ed-Flex allows waivers from specific requirements within six major education programs, the largest of which is title I of the Elementary and Secondary Education Act (ESEA), but not from many other federal education and noneducation requirements, such as the Individuals with Disabilities Education Act (IDEA), the school breakfast and lunch programs, and environmental requirements.
- Ed-Flex waiver authority does not address district officials' key concerns such as their need for accurate and timely information on federal requirements and the limited funds available to meet their program and administrative costs.

The Ed-Flex program cannot be expanded to a significant number of additional states unless the current requirement that the states have an approved plan for education reform under Goals 2000 is modified and the states make major changes in their ability to waive state-imposed education-related requirements.

- Ten states are ineligible for the Ed-Flex program because they do not have an approved Goals 2000 education reform plan, even though they can waive state statutes and regulations related to education.
- Of the remaining 28 states not currently in Ed-Flex, only 2 clearly have the statutorily required authority to waive state-imposed requirements.

Ed-Flex creates challenges in holding districts accountable for the results of individual waivers and also in holding states, districts, and the Department accountable for the results of federal programs (such as title I) that are affected by these waivers.

[1] Elementary and Secondary Education: Ed-Flex States Vary in Implementation of Waiver Process (GAO/HEHS-99-17, Nov. 13, 1998).

- Some Ed-Flex states have developed specific goals (such as improving student achievement in mathematics and science) and have established clear and measurable objectives for evaluating the effect of waivers (such as improving test scores by a certain number of points). Many Ed-Flex states, however, have established no goals or have defined only vague objectives.
- The Ed-Flex statute and the Department's guidance have given the states little specific direction on how to ensure accountability in return for the greater flexibility provided in the program, and the Department has exercised limited oversight of the program. At the same time, more specific guidance and more explicit federal direction might be difficult given the variation in the types of waivers that are allowed and the circumstances prompting them.

Ed-Flex Waiver Authority Is Useful but Limited in Scope

The Ed-Flex waiver authority applies to specific requirements in six major education programs, although most waivers being requested concern requirements of the title I program. Most participants find the Ed-Flex waiver authority useful in that it helps them promote educational reform efforts and in that it affords them some flexibility in implementing requirements related to these six programs. At the same time, the authority cannot be applied to some requirements within these programs, and it does not cover other key education programs and programs in other departments. Further, the waiver authority does not address officials' key concerns with federal requirements.

Ed-Flex Waiver Authority Applies to Certain Requirements of Some but Not All Education Programs

Ed-Flex states can waive specific requirements under the following programs:

- Title I of ESEA, which provides funding to help local school districts give additional educational assistance to disadvantaged children;
- Title II of ESEA, the Eisenhower Professional Development Program, which provides funding to local school districts for teacher training and professional development in mathematics and science;
- Title IV of ESEA, the Safe and Drug-Free Schools and Communities Program, which provides funding for programs to prevent violence and substance abuse;
- Title VI of ESEA, Innovative Education Program Strategies, which provides funding to help school districts develop innovative programs in several areas, including adult education and family literacy;

- Part C of title VII of ESEA, Emergency Immigrant Education, which provides funding for the educational needs of immigrant children; and
- The Carl D. Perkins Vocational-Technical Education Act, which provides support for secondary and postsecondary vocational and technical education programs.

Ed-Flex states may also waive some requirements of the General Education Provisions Act and the Education Department General Administrative Regulations (EDGAR) that apply to these programs. For example, Texas waived one EDGAR provision that requires written approval before transferring training funds from one budget category to another.

Although these six programs are included in Ed-Flex, many other key Department programs—including IDEA and the Bilingual Education Program—are not. Further, programs and requirements administered outside the Department (such as the school breakfast and lunch programs or environmental requirements) are not included in Ed-Flex. In addition, even within the six programs that are covered by Ed-Flex, the states are not authorized to waive any federal regulatory or statutory requirement relating to

- health and safety,
- civil rights,
- maintenance of effort,
- comparability of services,
- equitable participation of students and professional staff in private schools,
- parental participation and involvement, and
- distribution of funds to state and local education agencies.

The Ed-Flex waiver authority provides for two types of waivers: statewide waivers and waivers to individual school districts. Of the 12 Ed-Flex states, 7—Colorado, Maryland, Michigan, New Mexico, Ohio, Texas, and Vermont—have the authority to grant both statewide waivers (which can be used by any qualifying district in the state) and individual waivers (which can be used only by the district that applied and was approved for the waiver). The remaining 5 states—Illinois, Iowa, Kansas, Massachusetts, and Oregon—have the authority to grant waivers only

to individual school districts.[2] Under a statewide waiver, any qualifying school district can take advantage of the waiver without having to demonstrate a specific need for it.

States Differ in the Number of Waivers Granted but Most Waivers Are Related to Title I

The states differ in the number of Ed-Flex waivers they have granted. Of the nine states that had been participating in Ed-Flex for more than 1 year as of January 1998, four had granted 10 or fewer individual waivers. Other states, however, have been more active in their use of Ed-Flex. Kansas and Maryland had granted more than 20 individual waivers each—an especially high total for Maryland considering the small number of school districts (24) in the state. Ohio and Texas had not only granted a relatively high number of individual waivers but had also granted statewide waivers that have affected larger numbers of school districts. For example, a statewide waiver in Texas allows local school districts to use up to 25 percent of their Eisenhower Professional Development funds in the areas of reading, English, language arts, and social studies rather than restricting the funds for mathematics and science. Some of the differences in the districts' use of waivers among the states may reflect differences in the implementation of Ed-Flex—for example, the states differ in the amount of state resources they devote to outreach to inform local school districts about the possibility of Ed-Flex waivers and in their use of statewide waivers.

Most of the Ed-Flex waivers that have been granted have centered on title I, the largest federal program for elementary and secondary education. Waivers of the provisions for operating title I as a schoolwide program account for nearly 70 percent of approved individual waivers; in addition, three Ed-Flex states have granted statewide waivers to expand schoolwide programs. Another common type of waiver allows school districts to distribute title I funds according to criteria established by the district rather than adhering solely to the statutory formula. For example, one school in Massachusetts was not eligible for title I services for the 1997-98 school year, although it had been eligible in the past; further, the school was expected to become eligible again in the 1998-99 school year, when the district was to begin implementing a voluntary desegregation plan. The school district received a 1-year waiver to continue providing title I funds to this school rather than disrupt services for 1 year.

[2]The Department decided whether to grant an Ed-Flex state the authority to grant statewide waivers as part of the application process. Several states did not apply for the authority to grant statewide waivers.

Ed-Flex States Generally Report Positive Experiences, but Some Say Ed-Flex Has Limited Use

Officials from participating states have generally reported positive experiences with Ed-Flex. Two states that have used Ed-Flex extensively—Ohio and Texas—told us that the waivers they have granted under Ed-Flex have had a positive effect. For example, a Texas official told us that the statewide waiver in Texas to allow the more flexible use of federal teacher training funds has allowed districts to better direct professional development dollars to areas where they are needed the most. According to several officials from this and other Ed-Flex states, Ed-Flex is valuable, regardless of the number of waivers granted, because it promotes a climate that encourages state and local educators to explore new approaches, frequently making better use of the flexibility that already exists within state and federal requirements. One state official reported that Ed-Flex motivates school districts to consider nontraditional ways of using federal resources to enhance educational services. Similarly, Ohio officials reported that as a result of examining the relevant statutes and regulations, many districts have discovered that they already have the ability to do what they want without a waiver.

However, some officials from Ed-Flex states commented that the program cannot meet their hopes and expectations because it is limited to specific federal requirements. For example, one state official told us that the cumulative effect of all regulations combined, rather than any single requirement, causes problems for school districts. Therefore, he believes that Ed-Flex's emphasis on identifying specific individual requirements restricts its effectiveness. In another Ed-Flex state, staff told us that the Ed-Flex waiver authority is too narrow to do much good. Officials in several states reported that Ed-Flex would be more helpful if the waiver authority were extended to other programs, such as special education or bilingual education.

These reactions to Ed-Flex are consistent with the findings in our September 1998 report on how states and school districts have used waivers and other federal flexibility initiatives.[3] In this report, we found that school districts' concerns did not focus on any single program or requirement; instead, they extended across several broad areas, including obtaining key information, working with limited funds, and overcoming logistical and management challenges. For example, Ed-Flex does not assist school districts in hiring qualified teachers to plan and implement

[3] Elementary and Secondary Education: Flexibility Initiatives Do Not Address Districts' Key Concerns About Federal Requirements (GAO/HEHS-98-232, Sept. 30, 1998).

education plans for special education students under IDEA. According to district officials, Ed-Flex cannot reduce the volumes of paperwork that must be processed within a short period of time to determine student eligibility for assistance under school breakfast and lunch programs.

Few States Meet Current Ed-Flex Eligibility Criteria

Although proposed legislation would remove the limit that only 12 states can participate in Ed-Flex, in practical terms, Ed-Flex cannot be expanded to a significant number of additional states unless current eligibility criteria are modified and the states make major changes. Under current law, a state is eligible for Ed-Flex only if it meets two criteria. First, the legislation establishing Ed-Flex stipulates that only states that have an approved state education reform plan under the Goals 2000 program are eligible for Ed-Flex status. Second, Ed-Flex states must have the authority to waive their own state requirements to make them consistent with the federal waivers they grant.

When we surveyed state agencies in the 38 non-Ed-Flex states, we found that only 2 non-Ed-Flex states—Utah and Washington—clearly meet current eligibility criteria, as table 1 shows. In addition,

- 10 states are ineligible for Ed-Flex only because they do not have an approved state education reform plan under the Goals 2000 program,[4]
- 10 states are ineligible for Ed-Flex only because they can waive neither regulations nor statutes;
- 8 states are ineligible for both these reasons, and
- the remaining 8 states are potentially eligible for Ed-Flex, depending on the nature of their regulatory process. The education agencies in these states reported that they could waive state-imposed education regulations but not statutes. For these 8 states, if the state requirements that apply to schools and school districts appear largely or entirely in regulations rather than in statutes, Department officials told us, a state might be considered eligible for Ed-Flex. However, if many of the potentially related state requirements are imposed by statute, the state might not be eligible for Ed-Flex.

[4]Since April 26, 1996, the states have not been required to submit their Goals 2000 school reform plans to the Department for review and approval in order to receive funds under the program.

Table 1: States' Ed-Flex Status, 1998

States participating in Ed-Flex	Clearly eligible for but not participating in Ed-Flex	Potentially eligible for participation	Clearly ineligible for participation
Colorado	Utah	Alabama	Alaska
Illinois	Washington	Delaware	Arizona
Iowa		Georgia	Arkansas
Kansas		Hawaii	California[a]
Maryland		Kentucky	Connecticut[a]
Massachusetts		Minnesota	Florida[a]
Michigan		New Jersey	Idaho
New Mexico		West Virginia	Indiana[a]
Ohio			Louisiana
Oregon			Maine[a]
Texas			Mississippi
Vermont			Missouri
			Montana
			Nebraska
			Nevada
			New Hampshire
			New York
			North Carolina[a]
			North Dakota
			Oklahoma[a]
			Pennsylvania[a]
			Rhode Island
			South Carolina
			South Dakota
			Tennessee[a]
			Virginia
			Wisconsin[a]
			Wyoming

[a]State is ineligible for Ed-Flex only because it lacks an approved state education reform plan under the Goals 2000 program.

For states that do not qualify for Ed-Flex, however, both the state and local school districts can still take advantage of waivers. The Department can grant waivers to non-Ed-Flex states and local school districts provided that no state requirements will negatively affect a waiver's implementation. Both the Department and Ed-Flex states have approved similar kinds of waivers, most of which have sought to change the way in which funds are distributed or to broaden the range of individuals who may benefit.

The Structure of Ed-Flex Poses Challenges for Ensuring Accountability

In recent years, political leaders and government officials have become increasingly concerned with improving government management and increasing accountability for program results at the federal, state, and local levels. For example, the 1993 Government Performance and Results Act requires federal agencies to specify strategic goals and related performance objectives and to measure and report their progress in meeting these goals and objectives. Proponents of the Results Act anticipated that setting clearly defined goals (such as increasing reading proficiency for all students) would focus program efforts and that establishing specific, measurable objectives (such as having all fourth-grade students pass a basic reading test) could help assess progress toward these goals and thus enhance accountability.

In a recently issued report on performance and accountability, we discussed the challenges facing the Department in administering elementary and secondary education programs that are a joint responsibility with state and local agencies.[5] The Department is required to manage programs and achieve results while striking a balance between program flexibility and program controls. Ed-Flex poses similar challenges for achieving and maintaining accountability in a results-focused, data-driven environment. The Department is accountable for the overall results of the federal programs affected by Ed-Flex waivers. Yet, at the same time, it is delegating to the states the responsibility to grant waivers that might affect the programs' ability to achieve their purposes. The challenge under Ed-Flex is to grant states the flexibility to make decisions about waivers in return for their accepting the accountability for results—and for ensuring that program purposes are not compromised—that Education would otherwise exercise.

Ed-Flex legislation and the Department's guidance to the states emphasize that the increased flexibility provided by Ed-Flex is in exchange for accountability for results, but neither the statute nor the additional guidance provides specific direction on how the states should demonstrate accountability. The statute and guidance clearly delineate that the states must monitor school districts or schools affected by waivers, hold them accountable for the performance of the students who are affected by

[5]Major Management Challenges and Program Risks: Department of Education (GAO/OCG-99-5, Jan. 1999).

such waivers, and annually report to the Department.[6] The Department, in turn, is to approve the states' applications for Ed-Flex only if they demonstrate that they can ensure accountability for the activities and goals in their education reform plan. Within this general framework, however—and without much further specification of the meaning of "accountability"—states have broad latitude to develop accountability systems with limited federal oversight. The Department requires Ed-Flex states to submit an annual report to the Department summarizing the waivers granted in the previous calendar year. Aside from this reporting requirement, the Department's role in Ed-Flex is generally confined to providing technical assistance and information when the states request them.

Given this broad latitude, states vary widely in how they establish goals, track districts' progress, and protect underlying program purposes. Some states and districts have expressed their goals only in the vaguest of terms, while others have been more precise. For example, in one state where a district was granted a schoolwide waiver, only nonspecific goals were reported, such as "a commitment to the identification and implementation of programs that will create an environment in which all students actualize academic potential." In contrast, the goals listed for two school districts in another state that received similar waivers to implement schoolwide programs were to "improve reading comprehension" and to ensure that "students will become better readers and more proficient in math skills."

The Department's limited oversight role raises questions about ensuring accountability for the results of federal programs to which waivers apply. With each state independently deciding whether its waivers are consistent with the purpose of the underlying federal program and with uneven reporting of the results achieved through use of the waivers, there is potential for inconsistency across states. At the same time, it is not clear that the Department could or should be more specific in its guidance or more active in its oversight role. Providing more specificity could be difficult because of the variation in the types of waivers that are allowed and the circumstances prompting the waivers. In addition, providing explicit federal direction may affect the states' discretion in designing their own processes for overseeing and evaluating Ed-Flex waivers.

[6]Each district or school requesting a waiver in an Ed-Flex state is supposed to describe to the state (1) the purposes and overall expected results of the waiver and (2) for each school year, specific, measurable educational goals it expects to achieve.

Mr. Chairman, this concludes my prepared statement. We would be happy to answer any questions that you or Members of the Subcommittee may have.

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